

Remarks

I. *Support for Amendments*

By the foregoing amendments, the specification has been amended to insert the Abstract (containing the same text of the Abstract as filed in the International application that appears on the face page of the published International application) into the proper location for U.S. practice, as required by the Examiner. Claims 3, 5, 34 and 35 and withdrawn claims 7, 8 and 14 are sought to be amended. The amendment to claim 3 is to correct a grammatical error. The amendment to claim 5 is supported by paragraphs [0053], [0200] and [0235] of the present specification. The amendments to claims 34 and 35 and withdrawn claims 7 and 8 are sought to delete subject matter. The amendment to withdrawn claim 14 is sought to revise the dependency of this claim and to delete subject matter.

New claims 114-145 are sought to be added. New claims 114, 121 and 124-126 are supported by the originally filed claims and specification including, *inter alia*, original claim 14. New claim 115 is supported by the originally filed claims and specification including, *inter alia*, paragraph [0281] of the present specification. New claims 116-118 are supported by the originally filed claims and specification including, *inter alia*, paragraph [0241] of the present specification. New claim 119 is supported by the originally filed claims and specification including, *inter alia*, paragraphs [0041] and [0195] of the present specification. New claim 120 is supported by the originally filed claims and specification including, *inter alia*, original claim 19. New claim 122 is supported by the originally filed claims and specification including, *inter alia*, original claim 14 and paragraph [0050] of the present specification. New claim 123 is supported

by the originally filed claims and specification including, *inter alia*, paragraph [0282] of the present specification. New claim 127 is supported by the originally filed claims and specification including, *inter alia*, paragraph [0276] of the present specification. New claim 128 is supported by the originally filed claims and specification including, *inter alia*, original claim 13. New claim 129 is supported by the originally filed claims and specification including, *inter alia*, paragraph [0243] of the present specification. New claim 130 is supported by the originally filed claims and specification including, *inter alia*, paragraph [0282] of the present specification. New claims 131 and 133 are supported by the originally filed claims and specification including, *inter alia*, paragraph [0241] of the present specification. New claims 132 and 134 are supported by the originally filed claims and specification including, *inter alia*, original claim 4. New claim 135 is supported by the originally filed claims and specification including, *inter alia*, original claim 13. New claims 136 and 137 are supported by the originally filed claims and specification including, *inter alia*, paragraph [0265] of the present specification. New claims 138 and 139 are supported by the originally filed claims and specification including, *inter alia*, original claim 20. New claim 140 is supported by the originally filed claims and specification including, *inter alia*, paragraphs [0085] and [0211] of the present specification. New claims 141 and 143 are supported by the originally filed claims and specification including, *inter alia*, paragraph [0300] of the present specification. New claims 142 and 144 are supported by the originally filed claims and specification including, *inter alia*, original claim 19. New claim 145 is supported by the originally filed claims and specification including, *inter alia*, original claim 34 and paragraphs [0102] and [0104] of the present specification.

Applicants respectfully submit that these amendments place the application in condition for allowance and do not raise any new issue requiring further search or examination. These changes are believed to introduce no new matter, and their entry is respectfully requested.

Based on the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding rejections and that they be withdrawn.

II. Status of the Claims

By the foregoing amendments, claims 4, 6, 9, 12, 21-31, 33, 38-49, 51-52, 54-65, 67-68, 70-79, 81, 83-84, 86-95, 101, 103-106, and 110-113 were cancelled previously and claims 11, 32, 36-37, 50, 53, 66, 69, 80, 82, 85, 96-99, 102 and 107-109 have been cancelled herewith without prejudice to or disclaimer of the subject matter therein. Claims 7, 8, 10, 14 and 15 have been withdrawn by the Examiner. Claims 3, 5, 34 and 35 and withdrawn claims 7, 8 and 14 have been amended. New claims 114-145 have been added. As discussed above, these amendments add no new matter to the present application. Upon entry of these amendments, claims 1-3, 5, 7, 8, 10, 13, 14-20, 34, 35, 100 and 114-145 are pending in the application, with claim 1 being the sole independent claim.

III. Restrictions/Elections

The Examiner has withdrawn from consideration claims 7, 8, 10, 14, 15, 32, 36, 37, 50, 53, 66, 69, 80, 82, 85, 96-99, 102 and 107-109 as being drawn to nonelected species. However, in the Reply to the Restriction Requirement with Election of Species,

Applicants clearly indicated that claims 7, 8, 10, 14, 15 and 32 read on the elected species. In the Reply to the Restriction Requirement with Election of Species, Applicants elected a non-peptide covalent bond as the specific attachment between the viral-like particle and the antigen bound. Each of claims 7, 8 and 10 depend from claim 5, which encompasses a non-peptide covalent bond. Furthermore, the attachment sites recited in claims 7, 8 and 10 can bind each other via a non-peptide covalent bond. *See* U.S. Pub. No. 2006/0251677 A1, paragraphs [0053], [0200] and [0235]. Additionally, claim 14 recites a species within the species elected by Applicants in the Reply to the Restriction Requirement with Election of Species. Claim 15 depends from claim 2, which encompasses a non-peptide covalent bond. Claim 32 has been cancelled. Thus, Applicants respectfully request the Examiner to reconsider and withdraw the restriction/election requirement with respect to claims 7, 8, 10, 14 and 15, and to rejoin and examine these claims with the currently elected group of claims.

IV. *Obviousness-Type Double Patenting*

A. *U.S. Appl. No. 10/243,739*

On page 4 of the Office Action, the Examiner has provisionally rejected claims 1-3, 5, 11, 13, 16-20, 34, 35 and 100 on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 1-4, 6-8, 10, 11, 42, 43, 47-49 of commonly owned, co-pending U.S. Application No. 10/243,739.

Applicants respectfully traverse the Examiner's rejection. However, solely to advance prosecution, and not in acquiescence to the rejection, Applicants provide herewith a Terminal Disclaimer under 37 C.F.R. § 1.32(c) of the term of any patent

granted on this application which would extend beyond the expiration date of U.S. Application No. 10/243,739. Applicants respectfully request the consideration and entry of this Terminal Disclaimer, and the reconsideration and withdrawal of the present obviousness-type double patenting rejection.

B. U.S. Appl. No. 10/244,065

On page 5 of the Office Action, the Examiner has provisionally rejected claims 1-3, 5, 11, 13, 16-20, 34, 35 and 100 on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 1-207 of commonly owned, co-pending U.S. Application No. 10/244,065.

Applicants respectfully traverse the Examiner's rejection. However, solely to advance prosecution, and not in acquiescence to the rejection, Applicants provide herewith a Terminal Disclaimer under 37 C.F.R. § 1.32(c) of the term of any patent granted on this application which would extend beyond the expiration date of U.S. Application No. 10/244,065. Applicants respectfully request the consideration and entry of this Terminal Disclaimer, and the reconsideration and withdrawal of the present obviousness-type double patenting rejection.

C. U.S. Appl. No. 10/465,811

On page 5 of the Office Action, the Examiner has provisionally rejected claims 1-3, 5, 11, 13, 16-20, 34, 35 and 100 on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 1-4, 13, 23 and 25 of commonly owned, co-pending U.S. Application No. 10/465,811.

Applicants respectfully traverse the Examiner's rejection. However, solely to advance prosecution, and not in acquiescence to the rejection, Applicants provide herewith a Terminal Disclaimer under 37 C.F.R. § 1.32(c) of the term of any patent granted on this application which would extend beyond the expiration date of U.S. Application No. 10/465,811. Applicants respectfully request the consideration and entry of this Terminal Disclaimer, and the reconsideration and withdrawal of the present obviousness-type double patenting rejection.

D. U.S. Appl. No. 10/563,994

On pages 5-6 of the Office Action, the Examiner has provisionally rejected claims 1-3, 5, 11, 13, 16-20, 34, 35 and 100 on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 1, 2, 10, 14-16, 41-47, 48, 50, 52, 53, 54, 55 and 57 of co-pending U.S. Application No. 10/563,994. Applicants believe that the rejection over U.S. Application No. 10/563,994 was a typographical error and that the Examiner intended the rejection over co-owned, co-pending U.S. Application No. 10/563,944.

Applicants would like to draw the Examiner's attention to MPEP § 1490.V.D. which states that:

If two (or more) pending applications are filed, in *each* of which a rejection of one claimed invention over the other on the ground of provisional obvious-type double patenting (ODP) is proper, the ODP rejection will be made in each application. If the ODP rejection is the only rejection remaining in the earlier filed application of the two pending applications (but the later-filed application is rejectable on other grounds), the examiner should then withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer.

Applicants note that the priority date of the '944 reference application used in making this obviousness-type double patenting rejection is at least 3 months after the priority date of the present application. Hence, the present application is "the earlier filed application of the two pending applications" as that phrase is meant in MPEP § 1490.V.D. Applicants believe that the amendments and arguments presented herein will place the present application in condition for allowance except for the ODP rejection. Thus, Applicants request the Examiner to hold this rejection in abeyance until the arguments and amendments herewith have been considered, and to withdraw this rejection upon allowance of the present claims in accordance with MPEP § 1490.V.D.

E. U.S. Appl. Nos. 10/550,580 and 11/397,830

On page 6, the Examiner alleges that Applicants have filed multiple applications that are co-pending and that allegedly contain claims that are conflicting or overlapping in scope, for example, U.S. Application Nos. 10/550,580 (the '580 application") and 11/397,830 ("the '830 application").

Claim 1 of the present application recites:

wherein said immunostimulatory substance is packaged into said virus-like particle, and wherein said immunostimulatory substance is an unmethylated CpG-containing oligonucleotide, wherein the CpG motif of said unmethylated CpG-containing oligonucleotide is part of a palindromic sequence, and wherein said palindromic sequence is flanked at its 3'-terminus and at its 5'-terminus by less than 10 guanosine entities.

The claims of the co-owned, co-pending '580 application do not recite these elements. Furthermore, the '830 application is not co-owned with the present application, and indeed is completely unrelated to the present application in terms of applicants. Thus,

Applicants respectfully contend that the present application and the two applications cited in this portion of the Office Action do not represent "multiple applications that are co-pending and contain claims conflicting or overlapping in scope." Accordingly, reconsideration and withdrawal of the requirement under MPEP § 822 are respectfully requested.

Conclusion

All of the stated grounds of rejection have been properly traversed, accommodated or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt entry and favorable consideration of this Amendment and Reply are respectfully requested.

Respectfully submitted,

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